

## Message Text

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TAGS: UNCTAD EIND TGEN

SUBJECT: UNCTAD: INTERGOVERNMENTAL GROUP OF EXPERTS ON CODE OF  
CONDUCT ON TRANSFER OF TECHNOLOGY, MAY 5-15

REF: (A) STATE 106801 (B) GENEVA 3226

1. FOLLOWING IS TEXT OF DOCUMENT UNIMOUSLY SUPPORTED BY  
GROUP B AND TABLED BY IT ON FRIDAY, MAY 9. DESPITE CONCERNS  
VOICED BY U.S. AND CANADA, GROUP B WISHED TO CALL TEXT AN  
"OUTLINE" OF A CODE OF CONDUCT. LANGUAGE OF ORIGINAL U.S.  
DOCUMENT WAS ONLY marginally ALTERED, AND FORMS BASIS FOR  
CHAPTERS IV AND V OF GROUP B TEXT. CHAPTERS I, II AND III  
OF TEXT REPRESENT, IN EFFECT, INTROCUCTION TO AND SUMMARY  
OF CHAPTERS IV AND V.

2. QUOTE, BEGIN TEXT  
DRAFT OUTLINE FOR THE PREPARATION OF AN INTERNATIONAL CODE  
OF CONDUCT ON TRANSFER OF TECHNOLOGY SUBMITTED BY JAPAN ON  
BEHALF OF THE EXPERTS OF GROUP B

PREAMBLE (TO BE DRAFTED)

I. OBJECTIVES

A UNIVERSALLY APPLICABLE CODE OF CONDUCT FOR THE TRANSFER OF  
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TECHNOLOGY SHOULD HAVE THE FOLLOWING OBJECTIVES:

- A. TO FACILITATE THE INTERNATIONAL TRANSFER OF TECHNOLOGY;
- B. TO DEFINE GENERAL, EQUITABLE GUIDELINES FOR THE INTERNATIONAL  
TRANSFER OF TECHNOLOGY, TAKING ACCOUNT OF THE LEGITIMATE INTERESTS

OF SOURCE AND RECIPIENT ENTERPRISES AND THEIR GOVERNMENTS;  
C. FINALLY, IN THE SPECIAL CASE OF DEVELOPING COUNTRIES, TO  
FACILITATE THE GROWTH OF THE SCIENTIFIC AND TECHNOLOGICAL  
CAPABILITIES OF THESE COUNTRIES SO AS TO ASSIST THEM IN THEIR  
EFFORTS TO FULFILL THEIR SOCIAL AND DEVELOPMENT OBJECTIVES.

## II. PRINCIPLES

FOUR PRINCIPLES UNDERLIE AN INTERNATIONAL CODE OF THIS KIND FOR THE  
TRANSFER OF TECHNOLOGY.

A. FIRST, IT IS ESSENTIAL TO DISTINGUISH CLEARLY BETWEEN THE  
RESPONSIBILITIES OF THE PARTIES TO A TRANSFER OF TECHNOLOGY.

THESE PARTIES ARE:

- THE SOURCE ENTERPRISE
- THE RECIPIENT ENTERPRISE
- THE SOURCE GOVERNMENT
- THE RECIPIENT GOVERNMENT

THE TERM "ENTERPRISE" INCLUDES CORPORATION, PARTNERSHIPS, COMPANIES  
AND OTHER ASSOCIATIONS OR ORGANIZATIONS, WHETHER OR NOT FOR  
PECUNIARY PROFIT,  
AND WHETHER OWNED OR CONTROLLED BY EITHER GOVERNMENTS OR PRIVATE  
INDIVIDUALS. WHERE THE CONTEXT SO REQUIRES, THE TERM ALSO INCLUDES  
INDIVIDUALS ENGAGED IN THE TRANSFER OF RECEIPT OF TECHNOLOGY.

A "SOURCE ENTERPRISE" IS AN ENTERPRISE WHICH EXPORTS TECHNOLOGY,  
A "RECIPIENT ENTERPRISE" IS ONE WHICH IMPORTS TECHNOLOGY, A  
"SOURCE COUNTRY" IS A COUNTRY FROM WHICH TECHNOLOGY IS EXPORTED,  
A "RECIPIENT COUNTRY" IS ONE  
INTO WHICH TECHNOLOGY IS IMPORTED, AND SIMILARLY WITH "SOURCE  
GOVERNMENTS" AND "RECIPIENT GOVERNMENTS."

A CODE SHOULD CLEARLY INDICATE THOSE MATTERS WHICH ARE THE CONCERN  
OF ENTERPRISES AND THOSE WHICH ARE MORE PROPERLY THE CONCERN  
OF GOVERNMENTS.

B. SUCH A CODE SHOULD BE AN INTERNATIONAL INSTRUMENT OF A  
NON-BINDING CHARACTER. IT IS THE RESPONSIBILITY OF GOVERNMENTS  
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TO PROMOTE ALL APPROPRIATE MEANS OF FACILITATING THE TRANSFER OF  
TECHNOLOGY. AN INTERNATIONAL CODE SHOULD PERMIT EACH GOVERNMENT TO  
SO ACT, LEAVING IT FULL AND COMPLETE FREEDOM TO DECISION, INCLUDING  
THE RIGHT TO LEGISLATE ON THE SUBJECT OF TECHNOLOGY TRANSFER,  
WITHIN THE FRAMEWORK OF INTERNATIONAL LAW.

C. THE PROVISIONS OF A CODE SHOULD BE OF A GENERAL AND VOLUNTARY  
NATURE. AS A RESULT OF THE DIVERSITY OF THE SITUATIONS AND THE  
PARTIES INVOLVED, EVERY TRANSFER OF TECHNOLOGY IS AN INDIVIDUAL CASE.  
SPECIFIC RULES WOULD IMMEDIATELY RESULT IN THEIR FREQUENTLY BEING  
INAPPROPRIATE OR COUNTER-  
PRODUCTIVE.

ON THE OTHER HAND, GENERAL GUIDELINES CAN BE USEFUL, PROVIDED THAT THEY ARE NOT MANDATORY. THE FAILURE OF PARTIES TO A MUTUALLY AGREED CONTRACT TO OBSERVE ONE OR MORE OF SUCH GUIDELINES SHOULD NOT IN ITSELF INVALIDATE SUCH CONTRACT.

D. THE DIFFICULTY OF RESOLVING CONTRACTURAL DISPUTES MAKE IT IMPORTANT THAT THE PARTIES TO A CONTRACT BE FREE TO HAVE RECOURSE TO INTERNATIONAL ARBITRATION OR OTHER APPROPRIATE METHODS OF DISPUTE SETTLEMENT WHERE THEY SO AGREE.

### III. GUIDELINES

ON THE BASIS OF THE ABOVE-MENTIONED PRINCIPLES AND IN ORDER TO ACHIEVE THE OBJECTIVES CITED AT PARAGRAPH I, THE FOLLOWING GUIDELINES SHOULD CONSTITUTE A BASIS FOR ANY DRAFT OF A CODE OF CONDUCT.

#### GUIDELINES ON TRANSFER OF TECHNOLOGY

#### IV/ ENTERPRISES

FOR THE MAXIMUM MUTUAL BENEFIT OF ALL PARTIES TO TECHNOLOGY TRANSFER AGREEMENTS, THE FOLLOWING ARE RECOGNIZED AS IMPORTANT:

##### A. SOURCE ENTERPRISES

1. RESPONSIVENESS, TO THE EXTENT PRACTICABLE, TO THE SOCIAL AND DEVELOPMENT OBJECTIVES OF RECIPIENT COUNTRIES IN PLANNING STRATEGY  
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FOR EMPLOYING TECHNOLOGY;

2. PROVISION, AS AGREED, OF APPROPRIATE TECHNOLOGY, TOGETHER WITH RELEVANT SUPPORTING SERVICES AND ADVICE;
3. REASONABLENESS OF THE TERMS AND CONDITIONS UPON WHICH TECHNOLOGY IS TRANSFERRED, INCLUDING LICENCE FEES, ROYALTIES AND OTHER CHARGES;
4. CO-OPERATION, TO THE EXTENT FEASIBLE AND APPROPRIATE, IN THE DEVELOPMENT OF THE SCIENTIFIC AND TECHNOLOGICAL RESOURCES OF RECIPIENT ENTERPRISES, INCLUDING, WHEREEVER PRACTICABLE, THE TRAINING OF RECIPIENT EMPLOYEES;
5. UTILIZATION, TO THE EXTENT PRACTICABLE, OF MATERIALS, LABOUR AND TECHNOLOGY FROM THE RECIPIENT COUNTRY WITH A VIEW TO SUPPORTING THE RECIPIENT'S COUNTRY'S SOCIAL AND DEVELOPMENT OBJECTIVES;
6. COMPLIANCE WITH ALL APPLICABLE LAWS AND REGULATIONS, INCLUDING THOSE RELATING TO RESTRICTIVE BUSINESS PRACTICES.

##### B. SOURCE AND RECIPIENT ENTERPRISE

1. AGREEMENT TO APPROPRIATE DISPUTE SETTLEMENT ARRANGEMENTS, SUCH AS IMPARTIAL FACT-FINDING ARBITRATION PROCEDURES, INCORPORATING MUTUALLY AGREED CHOICE OF APPLICABLE LAW;
2. OBSERVATION OF FAIR AND HONEST BUSINESS PRACTICES IN ALL ASPECTS OF TECHNOLOGY TRANSFER TRANSACTIONS;
3. RESPECT FOR AGREEMENTS RELATED TO THE TRANSFER OF TECHNOLOGY;
4. RESPECT FOR THE CONFIDENTIALITY OF TRADE SECRETS AND KNOW-HOW ACQUIRED IN CONNEXION WITH THE TRANSFER OF TECHNOLOGY;

5. ABSTENTION FROM UNREASONABLE RESTRICTIVE BUSINESS PRACTICES  
AND THE ABUSE OF A DOMINANT MARKET POSITION.

C. RECIPIENT ENTERPRISES

1. PROVISION TO SOURCE ENTERPRISES OF APPROPRIATE INFORMATION  
REGARDING RELEVANT SOCIAL AND DEVELOPMENT OBJECTIVES AND LEGISLATION  
OF THE RECIPIENT COUNTRY, AND SUCH INFORMATION AS MAY BE REQUIRED  
FOR THE EFFECTIVE UTILIZATION OF THE TECHNOLOGY TRANSFERRED.

V. GOVERNMENTS

IN ORDER TO FOSTER MUTUALLY BENEFICIAL TRANSFERS OF TECHNOLOGY,  
THE FOLLOWING ARE RECOGNIZED AS IMPORTANT

A. SOURCE GOVERNMENTS

1. RENDERING OF ALL PRACTICABLE ASSISTANCE TO REQUESTING RECIPIENT  
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GOVERNMENTS IN THE STRENGTHENING OF THEIR EDUCATIONAL, SCIENTIFIC  
AND TECHNOLOGICAL RESOURCES, TO MEET THEIR SOCIAL AND DEVELOPMENT  
OBJECTIVES;

2. ENCOURAGEMENT OF SOURCE COUNTRY ENTERPRISES TO MAKE AVAILABLE  
IN TECHNOLOGY TRANSFER AGREEMENTS APPROPRIATE TECHNOLOGY, TOGETHER  
WITH RELEVANT SUPPORTING SERVICES AND ADVICE;

3. FACILITATION OF ACCESS BY RECIPIENT GOVERNMENTS AND RECIPIENT  
ENTERPRISES TO INFORMATION CONCERNING THE AVAILABILITY OF TECHNOLOGY  
WITHIN THE SOURCE COUNTRY.

B. SOURCE AND RECIPIENT GOVERNMENTS

1. ACKNOWLEDGMENT OF THE IMPORTANCE OF THE TRANSFER, ON REASONABLE  
TERMS AND CONDITIONS, OF APPROPRIATE TECHNOLOGY TO RECIPIENT  
COUNTRIES FOR THE PURPOSE OF HELPING THESE COUNTRIES ACHIEVE THEIR  
SOCIAL AND DEVELOPMENT

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## Message Attributes

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